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January 16, 2015

Executive Secretary
National Labor Relations Board
1099 14th Street N.W.
Washington, DC 20570-0001

Jonathan B. Kreisberg, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Thomas E. Obenberger, Esq
Michael Best & Friedrich LLP
100 E. Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202
E-Mail: teobenberger@michaelbest.com

Linda Gormezano
Lerner New York, Inc.
330 West 34th Street
New York, NY 10001
E-mail lgormezano@nyandcompany.com

RE: Lerner New York, Inc.
d/b/a New York & Company
Case No. 01-RM-142091

APPEAL OF THE UNION FROM THE REGIONAL DIRECTOR'S DECISION &

DIRECTION OF ELECTION

New England Joint Board, Local 444 (formerly Local 173) RWDSU/UFCW hereby files this appeal of the Regional Director's decision.

The Region held two days of hearings in this case. The Employer did not even appear on the first day and the Region should have dismissed the Employer's petition. Instead, the hearing officer asked the Union representative, who is not an attorney, to take the stand. The Union representative felt compelled to do this when so directed by a representative of the U.S. government. Because the Union representative could not answer questions about the employer's revenues, a second day of hearing was scheduled so that the employer could attend.

The Employer and the Union are parties to a collective bargaining agreement effective February 6, 2012 to February 6, 2015. As noted above the Union's local number is 444 not 173. The Union brought this to the attention of the Hearing Officer but apparently, the Union was ignored. The Region's decision has the wrong number and is at odds with the CBA.

Section 3.0 of the CBA requires that the "names and addresses of all newly engaged employees shall be furnished to the Union as promptly as reasonably possible after their employment" and makes clear that "newly engaged" means "newly hired." The employer does not notify the Union if it has hired employees in classifications excluded from the CBA. Resent requests for an updated list of union employee's names and addresses on November 14, 2014 and January 14, 2014 have gone unanswered.

Section 2.4 of the CBA states that the employer must supply the Union with a list of all new hires and newly promoted associates on a quarterly basis. The employer has not provided the Union with such a list since May of 2012.

Since the Employer did not notify the Union of any changes from 2012 until September of 2014, the Union had no reason to believe, nor can the Employer now claim there are 14 new employees as their most recent list shows, even though the Employer has not notified the Union of any new hires since September of 2014. To the best of the Union's knowledge the Employer did not hire any employees in classifications covered by the CBA since June of 2014 when it last told the Union of an additional dues paying member. The Employer's defense to this is "so what if we violated the contract, you should not have trusted us or taken us at our word."

It is not a coincidence that all of these new employees appeared during the Christmas season. Throughout the hearing, while the Union may have been less than eloquent as it was not represented by an attorney, as the Employer was and the NLRB was. In fact, the Employer has relied upon its lawyer's knowledge of the NLRB to place the Union in a position of disadvantage and to cherry pick which facts it shared with the NLRB. Neither the Region nor the Hearing Officer did anything to prevent this and insure that a full record be compiled. To the contrary the Employer noted that it filed a statement of position with the NLRB via email before it filed its brief and refers to this earlier statement into its brief, without sending the earlier statement to the Union.

The employer never served the Union with a copy of its brief which is in violation of the Board's rules.

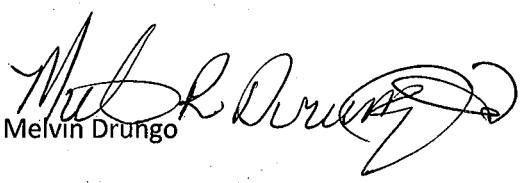
The Union may have said that eligible voters should be limited to dues paying members, it made it clear before the hearing, during the hearing and after the hearing, that it was referring to full-time, part-time and extra employees only it they worked one or two 4-5 hour shifts per week for the 6 months before the petition was filed. As the Union told the NLRB, the reason it did not feel the Employer's petition should be processed was because it was filed on December 3, 2014 in the height of the Christmas season and no election should be held until after the Christmas season ends.

The employer claims the Christmas season ended on Christmas day. However, and argument can be made that the season lasts much longer as most retailers and this Employer specifically, retain seasonal hires long after Christmas to handle mark down sales, restocking of inventory and to handle returns which this Employer allows for up to 60 days from the purchase date.

The Employer has requested a mail ballot, of course, so that everyone, including seasonal employees, who are not eligible, may vote. The Union has consistently opposed a mail ballot because this deprives them of their last opportunity to challenge people who appear to vote and are not in the bargaining unit.

Lastly, the Region did not define what constitutes an extra employee or what constitutes a seasonal employee and require the Employer to prove each and that its list of eligible voters be comprised solely of employees who meet the contractual standards of working one to two four or five hour shifts per week or are not seasonal employees. By its Decision and Direction of election and by its consideration of a Mail Ballot, the Region is permitting the Employer to hijack the Board's processes and control the outcome.

THE UNION ASKS THAT NO ELECTION BE HELD UNLESS AND UNTIL THESES ISSUES HAVE BEEN RESOLVED and the Region and the Union know who is eligible to vote.



Melvin Drungo

Business Agent Local 444

New England Joint Board, RWDSU/UFCW

149 Mechanic St.

Leominster, MA 01453